

PATENT COOPERATION TREATY

From the INTERNATIONAL SEARCHING AUTHORITY

DLA/SCP
US
991100

To:
DAVID L. ALBERTI
DLA PIPER RUDNICK GRAY CARY US LLP
2000 UNIVERSITY AVENUE
EAST PALO ALTO, CA 94303

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APR 17 2008

DLA PIPER US LLP

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NOTIFICATION OF TRANSMITTAL OF
THE INTERNATIONAL SEARCH REPORT AND
WRITTEN OPINION OF THE INTERNATIONAL
SEARCHING AUTHORITY, OR THE DECLARATION

(PCT Rule 44.1)

Applicant's or agent's file reference 2501120-5100	Date of mailing (day/month/year) 14 APR 2008
International application No. PCT/US05/06616	International filing date (day/month/year) 28 February 2005 (28.02.2005)
Applicant XFIRE, INC	

1. ☒ The applicant is hereby notified that the international search report and the written opinion of the International Searching Authority have been established and are transmitted herewith.

Filing of amendments and statement under Article 19:

The applicant is entitled, if he so wishes, to amend the claims of the international application (see Rule 46):

When? The time limit for filing such amendments is normally two months from the date of transmittal of the international search report.

Where? Directly to the International Bureau of WIPO, 34 chemin des Colombettes
1211 Geneva 20, Switzerland, Facsimile No.: (41-22) 338.82.70.

For more detailed instructions, see the notes on the accompanying sheet.

2. ☐ The applicant is hereby notified that no international search report will be established and that the declaration under Article 17(2)(a) to that effect and the written opinion of the International Searching Authority are transmitted herewith.
3. ☐ With regard to the protest against payment of (an) additional fee(s) under Rule 40.2, the applicant is notified that:
- ☐ the protest together with the decision thereon has been transmitted to the International Bureau together with the applicant's request to forward the texts of both the protest and the decision thereon to the designated Offices.
 - ☐ no decision has been made yet on the protest; the applicant will be notified as soon as a decision is made.

4. Reminders

Shortly after the expiration of 18 months from the priority date, the international application will be published by the International Bureau. If the applicant wishes to avoid or postpone publication, a notice of withdrawal of the international application, or of the priority claim, must reach the International Bureau as provided in Rules 90bis.1 and 90bis.3, respectively, before the completion of the technical preparations for international publication.

The applicant may submit comments on an informal basis on the written opinion of the International Searching Authority to the International Bureau. The International Bureau will send a copy of such comments to all designated Offices unless an international preliminary examination report has been or is to be established. These comments would also be made available to the public but not before the expiration of 30 months from the priority date.

Within 19 months from the priority date, but only in respect of some designated Offices, a demand for international preliminary examination must be filed if the applicant wishes to postpone the entry into the national phase until 30 months from the priority date (in some Offices even later); otherwise, the applicant must, within 20 months from the priority date, perform the prescribed acts for entry into the national phase before those designated Offices.

In respect of other designated Offices, the time limit of 30 months (or later) will apply even if no demand is filed within 19 months.

See the Annex to Form PCT/IB/301 and, for details about the applicable time limits, Office by Office, see the *PCT Applicant's Guide*, Volume II, National Chapters and the WIPO Internet site.

Name and mailing address of the ISA/ US
Mail Stop PCT, Attn: ISA/US
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
Facsimile No. (571) 273-3201

Authorized officer

Robert E Pezzuto

Telephone No. (571) 272-3600

Anna Heath
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APR 17 2008

PATENT COOPERATION TREATY

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INTERNATIONAL SEARCH REPORT

(PCT Article 18 and Rules 43 and 44)

Applicant's or agent's file reference 2501120-5100	FOR FURTHER ACTION <div style="display: inline-block; width: 40%; text-align: right; font-size: small;"> see Form PCT/ISA/220 as well as, where applicable, item 5 below </div>	
International application No. PCT/US05/06616	International filing date (<i>day/month/year</i>) 28 February 2005 (28.02.2005)	(Earliest) Priority Date (<i>day/month/year</i>) 16 March 2004 (16.03.2004)
Applicant XFIRE, INC		

This international search report has been prepared by this International Searching Authority and is transmitted to the applicant according to Article 18. A copy is being transmitted to the International Bureau.

This international search report consists of a total of 2 sheets.

☐ It is also accompanied by a copy of each prior art document cited in this report.

1. Basis of the Report

a. With regard to the **language**, the international search was carried out on the basis of:

- ☒ the international application in the language in which it was filed.
- ☐ a translation of the international application into _____, which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1(b))

b. ☐ This international search report has been established taking into account the **rectification of an obvious mistake** authorized by or notified to this Authority under Rule 91 Rule 43.6 *bis(a)*

c. ☐ With regard to any **nucleotide and/or amino acid sequenced** disclosed in the international application, see Box No. I.

2. ☐ **Certain claims were found unsearchable** (See Box No. II)

3. ☐ **Unity of invention is lacking** (See Box No. III)

4. With regard to the **title**,

- ☒ the text is approved as submitted by the applicant.
- ☐ the text has been established by this Authority to read as follows:

5. With regard to the **abstract**,

- ☒ the text is approved as submitted by the applicant.
- ☐ the text has been established, according to Rule 38.2(b), by this Authority as it appears in Box No. IV. The applicant may, within one month from the date of mailing of this international search report, submit comments to this Authority.

6. With regard to the **drawings**,

a. the figure of the drawings to be published with the abstract is Figure No. 5

- ☐ as suggested by the applicant.
- ☒ as selected by this Authority, because the applicant failed to suggest a figure.
- ☐ as selected by this Authority, because this figure better characterizes the invention.

b. ☐ none of the figures is to be published with the abstract.

INTERNATIONAL SEARCH REPORT

International application No.

PCT/US05/06616

A. CLASSIFICATION OF SUBJECT MATTER

IPC: **A63F 9/24** (2006.01)

USPC: 463/42

According to International Patent Classification (IPC) or to both national classification and IPC

B. FIELDS SEARCHED

Minimum documentation searched (classification system followed by classification symbols)

U.S. : 463/42

Documentation searched other than minimum documentation to the extent that such documents are included in the fields searched

Electronic data base consulted during the international search (name of data base and, where practicable, search terms used)

PLUS Search

C. DOCUMENTS CONSIDERED TO BE RELEVANT

Category *	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
X --- Y	US Pat. Pub. 2002/0086732 A1 (Kirmse et. al.) 04 July 2002 (04.07.2002) paragraphs 8, 29, 53-57 and figures 1 and 8-10.	1-5 and 7-24 ----- 6, 25 and 26
Y	US Pat. Pub. 2004/0032876 A1 (Garg et. al.) 19 February 2004 (19.02.2004), paragraph 21.	6
Y	US Pat. Pub. 2002/0094870 A1 (Murray) 18 July 2002 (18.07.2002), Figure 14 and paragraph 93.	25 and 26

☐ Further documents are listed in the continuation of Box C.

☐ See patent family annex.

* Special categories of cited documents:

"A"	document defining the general state of the art which is not considered to be of particular relevance	"T"	later document published after the international filing date or priority date and not in conflict with the application but cited to understand the principle or theory underlying the invention
"E"	earlier application or patent published on or after the international filing date	"X"	document of particular relevance; the claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone
"L"	document which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified)	"Y"	document of particular relevance; the claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art
"O"	document referring to an oral disclosure, use, exhibition or other means	"&"	document member of the same patent family
"P"	document published prior to the international filing date but later than the priority date claimed		

Date of the actual completion of the international search

01 April 2008 (01.04.2008)

Date of mailing of the international search report

14 APR 2008

Name and mailing address of the ISA/US

Mail Stop PCT, Attn: ISA/US
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

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Authorized officer

Robert E Pezzuto

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PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:
DAVID L. ALBERTI
DLA PIPER RUDNICK GRAY CARY US LLP
2000 UNIVERSITY AVENUE
EAST PALO ALTO, CA 94303

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Applicant's or agent's file reference 2501120-5100		Date of mailing (day/month/year) 14 APR 2008 FOR FURTHER ACTION See paragraph 2 below
International application No. PCT/US05/06616	International filing date (day/month/year) 28 February 2005 (28.02.2005)	Priority date (day/month/year) 16 March 2004 (16.03.2004)
International Patent Classification (IPC) or both national classification and IPC IPC: A63F 9/24(2006.01) USPC: 463/42		
Applicant XFIRE, INC		

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US Mail Stop PCT, Attn: ISA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (571) 273-3201	Date of completion of this opinion 01 April 2008 (01.04.2008)	Authorized officer Robert E Pezzuto Telephone No. (571) 272-3600
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WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/US05/06616

Box No. I Basis of this opinion

1. With regard to the **language**, this opinion has been established on the basis of:

☒ the international application in the language in which it was filed

☐ a translation of the international application into _____, which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1(b)).

2. ☐ This opinion has been established taking into account the **rectification of an obvious mistake** authorized by or notified to this Authority under Rule 91 (Rule 43*bis*.1(a))

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, this opinion has been established on the basis of:

a. type of material

☐ a sequence listing

☐ table(s) related to the sequence listing

b. format of material

☐ on paper

☐ in electronic form

c. time of filing/furnishing

☐ contained in the international application as filed.

☐ filed together with the international application in electronic form.

☐ furnished subsequently to this Authority for the purposes of search.

4. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

5. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US05/06616

Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims <u>6, 25 and 26</u>	YES
	Claims <u>1-5 and 7-24</u>	NO
Inventive step (IS)	Claims <u>NONE</u>	YES
	Claims <u>1-27</u>	NO
Industrial applicability (IA)	Claims <u>1-27</u>	YES
	Claims <u>NONE</u>	NO

2. Citations and explanations:

Please See Continuation Sheet

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US05/06616

Supplemental Box

In case the space in any of the preceding boxes is not sufficient.

V. 2. Citations and Explanations:

Claims 1-5 and 7-24 lack novelty under PCT Article 33(2) as being anticipated by Kirmse (US 2002/0086732).

Kirmse discloses a client-server system including a plurality of game clients, a game server, a plurality of messenger clients, and a messenger server. The game server includes logic to operate a multiplayer game using inputs from and outputs to an active game set of game clients, wherein game clients other than those in the active game set can join an active game by supplying the game server with a reference to the active game. The messenger server includes logic to forward messages from a sender messenger client to a receiving messenger client (para. 0008). Additionally, logic is included for coupling a game client to a messenger client to allow the game client to send the messenger client data used to initiate joining a game, whereby a message sent by the messenger client includes the data used to initiate joining a game. Also, logic is included for initiating a join of a game at an invitee client, using data received in a message to the invitee. Kirmse additionally discloses:

Re claims 1, 12, and 18. Kirmse discloses a system (10) for facilitating multiplayer gaming over a computer network (16), the System comprising: a client program running on a terminal (12) that automatically detects when selected individuals are playing certain multiplayer games on the computer network (Figs. 1 and 8-10; paras. 0029 and 0053), and notifies a user of the games and the selected individuals playing the games (para. 0053).

Re claims 2, 12, and 19. The system of claim 1, wherein the client program is further adapted to allow the user to join an individual in a game by running an instance of the game on the terminal and connecting the terminal to a location hosting the game (para. 0010; 0054; 0056-57). Moreover, the claim language "adapted to" is an intended use limitation that does not distinguish the claimed system over the prior art. The claim recitation is not a positive limitation, thus, the client program only requires the ability to perform. Furthermore, while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone. (MPEP § 2114).

Re claim 3. The system of claim 2 wherein the client program further generates a user interface that allows the user to join an individual in a game by selecting an icon (friend's identifier or smiley face icon) (Fig. 10; para. 0054; 0077).

Re claims 4, 13, and 20. The system of claim 2 wherein the client program is further adapted to detect running games on the user terminal and to communicate data identifying the running games and the user over the computer network for receipt by selected individuals (Fig. 8-10; para. 0053).

Re claims 5, 13, and 20. The system of claim 4 further comprising: a second program that determines a connection status of the running games and communicates the connection status to the client program (para. 0010, lines 1-11); wherein the client program is further adapted to communicate the connection status of the running games over the computer network for receipt by the selected individuals (para. 0010, lines 11-13).

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US05/06616

Supplemental Box

In case the space in any of the preceding boxes is not sufficient.

Re claims 7, 14, and 21. The system of claim 5 wherein the connection status comprises an IP address hosting a corresponding game (para. 0035; 0086).

Re claim 8. The system of claim 5 further comprising: one or more servers (messenger server) adapted to receive the data and connection status and to communicate the data and connection status to the selected individuals (18, Fig. 1; 118, Fig. 12; para. 0010; 0053).

Re claims 9, 15, and 22. The system of claim 1/2 wherein the program is further adapted to allow the user to send and receive instant messages to and from selected individuals (para. 0029). Also, see the intended use rationale provided above.

Re claims 10, 16, and 23. The system of claim 9 wherein the selected individuals include individuals stored on a friend list created by the user (para. 0003).

Re claims 11, 17, and 24. The system of claim 10 wherein the selected individuals include individuals stored on a friend list created by an individual stored on a friend list created by the user (para. 0003: since a user has a friend list (as shown in Figs. 8-10), then a friend on the list also has a friend list b/c both the user and the friend have the IM software).

Claim 6 lacks an inventive step under PCT Article 33(3) as being obvious over Kirmse (US 2002/0086732) in view of Garg (US 2004/0032876).

Kirmse discloses that as discussed above with regards to claims 1-5 and 7-24.

Kirmse fails to disclose the system of claim 5 wherein the second program comprises an LSP program.

In an analogous reference, Garg teaches of a network system that uses an LSP to intercept data sent and received by a client device. Garg is silent to a gaming network. However, Garg teaches of an LSP program (para. 0021).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate Garg's LSP program in Kirmse. One would be motivated to do so in order to take advantage of current technology to monitor which game server the user is connecting to so that an IP address can be obtained for other players to connect to the same server to play the same game.

Claims 25 and 26 lack an inventive step under PCT Article 33(3) as being obvious over Kirmse (US 2002/0086732) in view of Murray (US 2002/0094870).

Re claim 25. Kirmse discloses a computerized method for communicating over a computer network, comprising: detecting when first individuals stored on a list associated with a user are present on the computer network (Fig. 8-10; para. 0003; 0053); detecting when second individuals stored on a list associated with one or more of the first individuals are present on the computer network (Fig. 8-10; para. 0003; 0053).

However, Kirmse fails to disclose: notifying the user that the first and second individuals are present on the computer network; and allowing the user to send and receive messages to and from the first and second individuals.

In an analogous reference, Murray teaches a game which displays a list of friends including friends of friends involved in the game (Fig. 14) and also enables the user to communicate with all the friends on the list (para. 0093).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include friends of friends in Kirmse's displayed friend list and allow communication among more friends in order to increase the community of players playing the same game (para. 0093).

Re claim 26. Kirmse discloses instant messages (para. 0029).

NOTES TO FORM PCT/ISA/220 (continued)

The letter must indicate the differences between the claims as filed and the claims as amended. It must, in particular, indicate, in connection with each claim appearing in the international application (it being understood that identical indications concerning several claims may be grouped), whether

- (i) the claim is unchanged;
- (ii) the claim is cancelled;
- (iii) the claim is new;
- (iv) the claim replaces one or more claims as filed;
- (v) the claim is the result of the division of a claim as filed.

The following examples illustrate the manner in which amendments must be explained in the accompanying letter:

1. [Where originally there were 48 claims and after amendment of some claims there are 51]:
"Claims 1 to 29, 31, 32, 34, 35, 37 to 48 replaced by amended claims bearing the same numbers, claims 30, 33 and 36 unchanged; new claims 49 to 51 added."
2. [Where originally there were 15 claims and after amendment of all claims there are 11]:
"Claims 1 to 15 replaced by amended claims 1 to 11."
3. [Where originally there were 14 claims and the amendments consist in cancelling some claims and in adding new claims]:
"Claims 1 to 6 and 14 unchanged; claims 7 to 13 cancelled; new claims 15, 16 and 17 added." or
"Claims 7 to 13 cancelled; new claims 15, 16 and 17 added; all other claims unchanged."
4. [Where various kinds of amendments are made]:
"Claims 1-10 unchanged; claims 11 to 13, 18 and 19 cancelled; claims 14, 15 and 16 replaced by amended claim 14; claim 17 subdivided into amended claims 15, 16 and 17; new claims 20 and 21 added."

"Statement under Article 19(1)" (Rule 46.4)

The amendments may be accompanied by a statement explaining the amendments and indicating any impact that such amendments might have on the description and the drawings (which cannot be amended under Article 19(1)).

The statement will be published with the international application and the amended claims.

It must be in the language in which the international application is to be published.

It must be brief, not exceeding 500 words if in English or if translated into English.

It should not be confused with and does not replace the letter indicating the differences between the claims as filed and as amended. It must be filed on a separate sheet and must be identified as such by a heading, preferably by using the words "Statement under Article 19(1)."

It may not contain any disparaging comments on the international search report or the relevance of citations contained in that report. Reference to citations, relevant to a given claim, contained in the international search report may be made only in connection with an amendment of that claim.

Consequence if a demand for international preliminary examination has already been filed

If, at the time of filing any amendments and any accompanying statement, under Article 19, a demand for international preliminary examination has already been submitted, the applicant must preferably, at the time of filing the amendments (and any statement) with the International Bureau, also file with the International Preliminary Examining Authority a copy of such amendments (and of any statement) and, where required, a translation of such amendments for the procedure before that Authority (see Rules 55.3(a) and 62.2, first sentence). For further information, see the Notes to the demand form (PCT/IPEA/401).

If a demand for international preliminary examination is made, the written opinion of the International Searching Authority will, except in certain cases where the International Preliminary Examining Authority did not act as International Searching Authority and where it has notified the International Bureau under Rule 66.1bis(b), be considered to be a written opinion of the International Preliminary Examining Authority. If a demand is made, the applicant may submit to the International Preliminary Examining Authority a reply to the written opinion together, where appropriate, with amendments before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later (Rule 43bis.1(c)).

Consequence with regard to translation of the international application for entry into the national phase

The applicant's attention is drawn to the fact that, upon entry into the national phase, a translation of the claims as amended under Article 19 may have to be furnished to the designated/elected Offices, instead of, or in addition to, the translation of the claims as filed.

For further details on the requirements of each designated/elected Office, see the *PCT Applicant's Guide*, Volume II.